Filed 8/25/04 Moore v. Los Angeles County Met. Transp. Auth. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

SHIRLEY RAVEN MOORE, Plaintiff and Appellant, v. LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, Defendant and Respondent.	B169326 (Los Angeles County Super. Ct. No. BC239711)

APPEAL from a judgment (order of dismissal) of the Superior Court of Los Angeles County. Soussan Bruguera, Judge. Affirmed.

Shirley Raven Moore, in pro. per., for Plaintiff and Appellant.

Office of County Counsel, Steven J. Carnevale, Assistant County Counsel and Richard P. Chastang, Principal Deputy County Counsel for Defendant and Respondent.

Shirley Raven-Moore sued her former employer Los Angeles County Metropolitan Transportation Authority (MTA) and for the second time appeals to this court from the dismissal of her complaint following sustaining of respondent's demurrer without leave to amend, this time from her operative third amended complaint. Her previous appeal from dismissal following the sustaining of respondent's demurrer to her second amended complaint resulted in an unpublished decision reversing the dismissal (B153368), giving plaintiff an opportunity to amend to show reasons, if any, why she had apparently filed her complaint in a tardy fashion and giving her a chance to allege violation of federal law as well. We conclude plaintiff has not demonstrated compliance with tort claims requirements, exhaustion of administrative remedies, or equitable tolling that might toll the various statutes of limitations and we therefore shall affirm the trial court's judgment (order of dismissal).

PROCEDURAL HISTORY

Claims prior to litigation

Plaintiff filed six complaints of discrimination dated May 19, 1999, against several people at the MTA. She checked "sex" as the basis for discrimination in four complaints; "medical condition" in a fifth, and no basis checked in a sixth. Those complaints, received by DFEH on May 24, 1999, were closed a day later by letters stating plaintiff had requested an immediate right-to-sue notice. She was advised that a civil action "must be filed within one year from the date of this letter" and that, for a federal notice of right-to-sue, she must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint "within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier."

Represented by counsel, plaintiff filed a notice of claim on April 11, 2000. Her attorney stated: "This claim arises out of an incident on April 14, 1998 wherein someone telephoned in a bomb threat to the MTA office . . . . MTA employee Kenneth Jones received the call and recorded it. Approximately 15 minutes later, MTA employee Tony

Malone also received a telephone call from a female indicating that there was a bomb in the building.

"[Three named] MTA employees . . . falsely identified the caller as Shirley Raven Moore. As a result of these false allegations, Shirley Raven Moore was arrested, placed into custody and prosecuted. [¶] Shirley Raven Moore went through two jury trials. The first trial resulted in a hung jury. The second trial resulted in her acquittal on November 18, 1999. [¶] Shirley Raven Moore contends that the false allegations were made by the employees of the MTA in retaliation for the lawsuit that she had pending against the MTA alleging discrimination and defamation."

Furthermore, on July 21, 2000, plaintiff filed an application to file a late claim, arguing the date of incident was April 14, 1998, but the claim accrued on November 18, 1999, when she was acquitted of all the charges related to the incident.

History preceding previous appeal[1]

Plaintiff filed her initial complaint on November 3, 2000, and amended that complaint following MTA's demurrer. A demurrer to her first amended complaint was sustained with leave to amend.[2]

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[1] The procedural history in this section is taken from the previous appeal.

[2] The original complaint for damages (wrongful termination) asserted causes of action for breach of contract, breach of the covenant of good faith and fair dealing, and defamation. The demurrer to the first two causes of action was grounded in plaintiff's failure to spell out those causes of action in a timely filed governmental tort claim. The demurrer to the defamation cause of action alleged an absolute privilege for filing police reports pursuant to Civil Code section 47.

The first amended complaint (FAC) asserted causes of action for defamation and malicious prosecution. Moreover, there was an attempt to allege a written claim to the MTA in compliance with the Government Code. The demurrer to the FAC was based on MTA's immunity under Government Code sections 821.6 for malicious prosecution and 821.2 and Civil Code section 47 for defamation, as well as failure to file a timely governmental tort claim that alleged the same facts as in the complaint.

Her second amended complaint (SAC) was filed May 1, 2001, asserting causes of action for sex discrimination and retaliation in violation of public policy. The SAC named MTA employees Tony Malone, John McBryan, and Joe P. Brown as well as the MTA as defendants. The following facts were alleged: Plaintiff was first employed by MTA on October 9, 1983. When working her assignment as a bus driver on April 14, 1998, she was falsely accused of passing up patrons; she was charged with gross misconduct and scheduled for a disciplinary hearing on April 28, 1998. On the date set for her hearing, an anonymous caller allegedly called MTA and made a bomb threat. A second bomb threat was made by telephone about 15 minutes later and received by named defendant and Department Supervisor Tony Malone.

The three named individual defendants allegedly falsely identified plaintiff as the caller, and as a result she was arrested, placed into custody and prosecuted. The first criminal trial resulted in a hung jury, and the second jury acquitted her on November 18, 1999.

Plaintiff alleged that the false allegations were made "in retaliation for the lawsuit that she had pending against the MTA and sex discrimination." Plaintiff allegedly had at all times "duly performed all the conditions of the employment agreement" and "has been ready, willing and able to perform her job." Nevertheless, she was terminated from her employment in May 1999.

Plaintiff alleged she presented a written claim to the MTA on April 11, 2000.[3] A representative of MTA signed a postal receipt with April 24, 2000, as the date of delivery. Hertz Claim Management returned the claim on or about June 29, 2000, alleging it was not presented within 6 months after the date of occurrence. Plaintiff then presented an application to file late claim with the MTA on or about July 21, 2000; in the

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[3] The claim was attached as Exhibit A and incorporated by reference. Plaintiff alleged her claim was in compliance with the requirements of section 910 et seq. of the Government Code.

application to file a late claim, her attorney represented that the claim "accrued on November 18, 1999 when she was acquitted of [all the] charges related to the incident. In addition, she asserted that her reason for delay was based on advice of counsel, that she had no right to file said claim until the criminal charges relating to the alleged bomb threat were resolved. Had she been convicted she would be precluded from filing a claim. However she was acquitted on November 18, 1999. Thus it was claimant's belief that she had six months from November 18, 1999 to file a claim. "In fact, a claim was filed on April 24, 2000, approximately five months after her acquittal."

According to the SAC, the MTA allegedly "rejected the claim in its [entirety]" on September 7, 2000. Actually, the MTA's letter of September 7 advised plaintiff's counsel that the application for permission to file late claim was "hereby rejected" and did not reach the merits of her claim.[4]

The first cause of action in the SAC filed April 24, 2001, was for sex discrimination in violation of Government Code section 12940 and California Constitution, Article I, section 8. Plaintiff, an African-American female, alleged that defendants discriminated against her "on the basis of sex" by engaging in the conduct and making the false accusations alleged above; that such acts were committed "maliciously, fraudulently, and oppressively" and she is entitled to punitive damages, except from the MTA, as well as loss of earnings and medical benefits, reasonable attorneys fees, costs, and expenses.

The second cause of action in the SAC was for retaliation in violation of public policy. Plaintiff incorporated the previous allegations and added that for the past ten

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[4] Moreover, the letter contained a warning pursuant to state law that, if plaintiff wished to file a court action on this matter, she must "first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.4 (claims presentation requirement). See Government Code Section 946.6. Such application must be filed with the court within six (6) months from the date your application for leave to present a late claim was denied."

years she "has complained to MTA regarding acts of discrimination, harassment, disparate treatment based on race and sex. Said complaints were protected activities. Because of such activities and in retaliation for such activities defendants made false allegations on April 28, 1998 alleging that she made a bomb threat." Moreover, the "aforementioned retaliatory conduct was performed in violation of the retaliation provisions of the Calif. Fair Employment and Housing Act, and other State Statutory and common law authorities."

MTA demurred to the first cause of action, sex discrimination, based on plaintiff's failure to allege exhaustion of administrative remedies and failure to obtain a right-to-sue letter. The demurrer to the second cause of action, for retaliation, was based on three separate grounds: l) the cause of action was not reflected in a timely filed government tort claim; 2) the one-year statute of limitations had run (Code Civ. Proc., § 340(3); and 3) the claim was barred by Government Code section 945.6.

In her opposition, plaintiff supplied her complaint with the DFEH alleging sex discrimination, filed April 21, 1999, and her right to sue notice dated April 22, 1999. She also attached her DFEH complaints, filed with DFEH on May 24, 1999, and the seven right-to-sue letters issued by DFEH on May 25, 1999.[5] She requested leave to amend to allege facts that a timely administrative claim was filed with the DFEH and that a right to sue letter had been issued.

Plaintiff alleged that the retaliation claim was not barred by the statute of limitations, arguing that the six-month time period in which to file a government claim statute was tolled while criminal charges were pending and until her acquittal on April 11, 2000. Because plaintiff relied on the tolling of the period to file her claim, she further

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[5] The MTA pointed out in its reply that those letters dated May 25, 1999, informed plaintiff that the "civil action must be filed within one year from the date of this letter" but that her civil action was filed on November 3, 2000, months after that one-year deadline. Thus, according to the MTA, the cause of action for sex discrimination was barred by section 12965(b).

argued that the two-year statute of limitations of Government Code section 945.3 does not bar the action because she filed the lawsuit on November 3, 2000, only seven months after her acquittal.[6] Finally, she cited the claim's mention of "retaliation" as adequate notification to the MTA of her intention to allege retaliation.[7]

The trial court sustained the demurrer without leave to amend and dismissed the action. Plaintiff's motion for reconsideration, filed in pro. per., was denied.[8] The previous appeal was from the order sustaining the demurrer without leave to amend and dismissing the action. An affidavit attached to the notice of appeal stated it was "based upon the denial of civil and constitutional rights in favor of local court rules, Intrinsic fraud, bad faith dealing by defendants, conflict of interest involving the plaintiff, county counsel and the courts."

Previous decision

Our unpublished decision in B153368 reversed the trial court's dismissal with directions. Plaintiff's first cause of action in the SAC, for discrimination based on sex, was filed over a year after the right-to-sue letters were issued. This court reversed to allow plaintiff an opportunity to amend based on her representation that the late filing could be cured by amendment to avoid the one-year time period. We ruled that "Appellant has argued she can plead facts that allow her to avoid that one-year time

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[6] The MTA replied that Government Code section 945.3 does not apply by its very terms since plaintiff's lawsuit is not one "against a peace officer or the public entity employing a peace officer based upon conduct of the peace officer relating to the offense for which the accused is charged." (See *Williams v. Los Angles Unified School Dist*. (1994) 23 Cal.App.4th 84.)

[7] Plaintiff added: "Admittedly the government claim does not state that the public policy violated was 'sex discrimination' however, the claim does state that plaintiff is female that she had a lawsuit pending for discrimination, and both complaints filed with FEHA allege sex discrimination. [¶] It is simply ludicrous for MTA to allege that they were not on notice that plaintiff was complaining of sex discrimination and retaliation."

[8] Plaintiff's counsel apparently substituted out on July 19, 2001.

period. If not, after amendment, she will be precluded from proceeding on that cause of action."

As to the second cause of action, for retaliation in violation of public policy, we ruled that the original complaint for wrongful termination included an allegation of "retaliation" and was filed within the one-year time limit. Moreover, we held that the governmental tort claim adequately set forth the basis for a retaliation cause of action and the second cause of action was not barred by the two-year period set forth in Government Code section 945.6. Finally, upon remand, we allowed plaintiff to amend to raise a cause of action under 42 U.S.C. 1981. We cautioned that plaintiff "will be filing her third amended complaint, and there are limits to the chances for amendment that a trial court should allow. Plaintiff is clearly approaching that limit."[9]

Additional procedural history

Plaintiff filed her third amended complaint in pro. per. on February 10, 2003. She listed eight cases of action: race discrimination, negligence, fraud and deceit, sex discrimination, handicap discrimination, retaliation in violation of public policy (42 U.S.C. § 1981), and declaratory and injunctive relief.

The MTA filed its demurrer to the third amended complaint on February 18, 2003. The basis for the demurrer was failure to exhaust administrative remedies (Gov., § 12960) as to the first and fifth causes of action; failure to satisfy the Tort Claims Act (Gov. Code, 900 et seq.) as to the second and third causes of action; the bar of one-year statute of limitations as to the second (Code Civ. Proc., § 340(3)), fourth (Gov. Code, § 12965(b)), sixth (Code Civ. Proc., § 340(3); and Gov. Code, § 12965), and seventh causes of action (Code Civ. Proc., § 340(3)); and failure to allege a written instrument or an inadequate remedy at law as to the eighth cause of action.

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[9] We also rejected plaintiff's request to review denial of her motion to disqualify the trial court judge. Pursuant to Code of Civil Procedure section 170.3, a petition for writ of mandate is the appropriate method for review.

Plaintiff's opposition labeled the grounds raised by respondent as "hyper-technical." She admitted that "on erroneous advice of counsel, plaintiff did not submit the right to sue letters which were still valid until May." Her opposition, like her brief on appeal, is directed primarily to the merits of her allegations rather than the grounds raised by respondent in its demurrer. Her declaration in support of her opposition mischaracterizes this court's opinion in her prior appeal.

On the date set for hearing, plaintiff filed a "reply brief" to the demurrer.[10] The reply discussed in part the issues of exhaustion of administrative remedies, the two-year statute of limitations of Government Code section 945.6, and other grounds raised.

The hearing of March 24, 2003, began with plaintiff's inquiry whether the trial court could be "fair and impartial with me." The trial court assured her it could be, and the parties discussed their interpretations of this court's previous decision. Plaintiff argued that the ignorance of her counsel was sufficient reason to toll the one-year statute of limitations. The MTA contended that no justifiable reason was given to toll the one-year statutes of limitations under FEHA or the federal claims. The court asked MTA's counsel to prepare a detailed proposed order.

On April 8, 2003, plaintiff filed a document entitled "answer," addressing the grounds raised in the demurrer. She asked for leave to amend the eighth cause of action.

The trial court signed and filed its order sustaining the demurrer on June 2, 2003. The demurrer was sustained without leave to amend as to all causes of action. As to the first cause of action, for race discrimination, the demurrer was sustained for plaintiff's failure to exhaust her administrative remedies in that none of the six complaints filed with the DFEH "raised any issue of race discrimination."

The court ruled that the second cause of action, for negligence, was raised for the first time in the third amended complaint (TAC), was never set forth in a governmental

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[10] Opposing counsel objected to this surreply but did not request a continuance, which the court would have granted.

tort claim, and was precluded by the section 340(3). Similarly, the third cause of action, for fraud, was not set forth in a government tort claim and is therefore barred (*Nelson v. State of California*. (1982) 139 Cal.App.3d 72, 79.)

The demurrer was sustained as to the fourth cause of action, for sex discrimination, because it was filed more than a year from the date of the May 25, 1999, DFEH letter and was therefore untimely according to Government Code section 12965. The sixth cause of action, for disability discrimination, was found lacking both because not filed within one year from issuance of the right to sue notice and because the six complaints filed with the DFEH did not mention disability discrimination.

The sixth and seventh causes of actions, for federal civil rights violations, were pled almost four years after the alleged incidents and therefore were barred by the one-year statute of limitations in Code of Civil Procedure section 340(3). (*Goodman v. Lukens Steel Co.* (1987) 482 U.S. 656, 661-662; *Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316.) Any retaliation cause of action under FEHA imbedded within the sixth of action also is barred for plaintiff's failure to file suit within one year from the issuance of the May 24, 1999, right-to-sue letter. The court specifically found that "the doctrine of equitable tolling does not apply in this case because Plaintiff cannot satisfy the requirements of Government Code Section 12965(e)."

Finally, regarding the eighth cause of action, for declaratory relief and injunction, the court ruled that "[p]laintiff fails to allege a written instrument upon which declaratory relief may be based" and "fails to indicate why legal damages are not adequate." In addition, regarding the request for injunctive relief, the court ruled the cause of action "is unintelligible, ambiguous and uncertain."

A minute order dated June 6, 2003, ordered the demurrer sustained without leave to amend and the complaint dismissed. Plaintiff thereafter filed a petition for writ of mandate or prohibition, seeking review of the judgment of dismissal. This court denied the petition (B168008) because the dismissal was appealable and thus petitioner had an adequate remedy at law.

Plaintiff appeals from "the Order Sustaining Demurrer Without Leave to Amend and dismissing action on June 6, 2003." The minute order further stated "The Court signs the attorney-prepared order this date."

CONTENTIONS ON APPEAL

Appellant devotes most of her opening brief to the merits of her lawsuit, i.e., that she suffered discrimination and retaliation for speaking up about public concerns. Further, she claims her DFEH complaint was timely filed and that she checked boxes for retaliation, sex, harassment and medical condition. In addition, plaintiff maintains that the statute of limitations and claims statutes are not specifically listed grounds for a general demurrer.

DISCUSSION

1. Standard of review.

"'Our only task in reviewing a ruling on a demurrer is to determine whether the complaint states a cause of action.' (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125 [ ].) '"We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed." [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: If it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.' (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [ ].) An appellate court must affirm if the trial court's decision to sustain the demurrer was correct on any theory. (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742 [ ].)" (*Kennedy v. Baxter Healthcare Corp*. (1996) 43 Cal.App.4th 799,

807- 808; accord *Windham at Carmel Mountain Ranch Assn. v. Superior Court* (2003) 109 Cal.App.4th 1162, 1168.)

2. The trial court properly sustained the demurrer without leave to amend.

a. Failure to exhaust administrative remedies bars race discrimination claims.

"To bring a civil action under the Fair Employment and Housing Act (FEHA), a person must first file a claim with the DFEH within one year of the date upon which the alleged act of discrimination occurred. (Gov.Code, § 12960.)" (*Keiffer v. Bechtel Corp.* (1998) 65 Cal.App.4th 893, 895-896.) "Under FEHA, the employee must exhaust the administrative remedy provided by the statute by filing a complaint with the Department of Fair Employment and Housing (Department) and must obtain from the Department a notice of right to sue in order to be entitled to file a civil action based on violations of the FEHA. (Gov.Code, §§ 12960, 12965, subd. (b); *Rojo v. Kliger* (1990) 52 Cal.3d 65, 88 [276 Cal.Rptr. 130, 801 P.2d 373]; *Martin v. Lockheed Missiles & Space Co*. (1994) 29 Cal.App.4th 1718, 1724 [35 Cal.Rptr.2d 181].) The timely filing of an administrative complaint is a prerequisite to the bringing of a civil action for damages under FEHA. [Citations.] [¶] As for the applicable limitation period, FEHA provides that no complaint for any violation of its provisions may be filed with the Department '*after* the expiration of one year from the date upon which the alleged *unlawful practice* or refusal to cooperate *occurred*,' with an exception for delayed discovery not relevant here. (Gov.Code § 12960, italics added.)" (*Romano v. Rockwell Internat., Inc*. (1996) 14 Cal.4th 479, 492.) In addition, "an individual must exhaust his or her administrative remedies before filing a civil action." (*Miller v. United Airlines, Inc.* (1985) 174 Cal.App.3d 878, 890, citing *Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211.) In FEHA (but not Title VII matters, 42 U.S.C. § 2000e et seq.), a city employee challenging adverse findings of a quasi-judicial administrative agency must also exhaust his or her judicial remedies by seeking to have the employer's final adverse finding judicially reviewed and set aside before bringing suit. (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65; see also *Schifando v. City of Los Angeles* (2003) 31

Cal.4th 1074, 1092 ["This court . . . has never held that exhaustion of an internal employer procedure was required where an employee made a claim under FEHA or another statutory scheme containing its own exhaustion prerequisite"].)

Only "sex" and "medical condition" were checked as the reason for the claimed harassment or denial of family or medical leave in plaintiff's DFEH claims. Race was not mentioned or checked in the DFEH claims. Thus, the demurrer was properly sustained as to the first cause of action for race discrimination. (See 1 Wrongful Employment Termination Practice (2d ed. May 2003 update) §§ 9.56-9.57, pp. 476-478 [plaintiff generally cannot litigate issues or allege bases of discrimination not included in the administrative charge filed with the FEHA or EEOC].)

We need not decide if checking "medical condition" on one claim form constitutes filing a claim for disability discrimination for the purpose of exhaustion of administrative remedies, where "physical disability" and "mental disability" were left unchecked. As explained below, even if the DFEH claim were to be interpreted to allege handicap discrimination, the complaint was not filed within one year of the right-to-sue letter.

b. The one-year statute of limitations of bars all plaintiff's FEHA claims.

Government Code section 12965, subdivision (b), requires that a civil action based on FEHA claims be filed "within one year" from the date of the DFEH right-to-sue letters. (See Chin et al., Cal. Practice Guide: Employment Litigation (The Rutter Group 2003) § 16:303, p. 16-34.) All of the DFEH right-to-sue letters were dated May 25, 1999, in the case at bench. Plaintiff's initial complaint was not filed until November 2000, more than one year later. Given a chance to amend her complaint to attempt to demonstrate compliance, an excuse for noncompliance, or tolling, plaintiff's only excuse is the negligence of her attorney. She has provided no authority to allow later filing based on such circumstances. Thus, the FEHA-based claims for race, sex, and handicap discrimination set forth in counts 1, 4, and 5 are barred and the demurrer was properly sustained as to those counts.

c. The tort causes of action for negligence and fraud are barred for failure to comply with the California Tort Claims Act.

In her third amended complaint (TAC), plaintiff attempted for the first time to allege causes of action for negligence (second cause of action) and fraud and deceit (third cause of action). The cause of action for negligence was based on the employer's alleged failure to train their directors, managers and supervisors. The cause of action for fraud and deceit alleges representations by the employer that she would not be subjected to harassment and discrimination; the employer would not unreasonably, dishonestly or arbitrarily attempt to prevent her from receiving benefits; and refusing to provide reasonable accommodations for her handicap status.

We have quoted above plaintiff's governmental claim filed in April 2000 and her allegations in the DFEH claims. None of the allegations in counts 2 and 3 was included in a claim with a public entity prior to bringing the tort action. The demurrer was properly sustained for failure to satisfy the Tort Claims Act.

d. The sixth and seventh causes of action, grounded in 42 U.S.C. §§ 1983 and 1981, are barred by the one-year statute of limitations.

Plaintiff's sixth cause of action (retaliation in violation of public policy under 42 U.S.C. § 1983) alleged that she complained to no avail about the MTA's unlawful activities and was therefore subjected to retaliatory personnel actions. The trial court sustained the demurrer as to the sixth cause of action, l) because the civil rights violation was not pled until almost four years after the alleged incidents, and is thus barred by the one-year statute of limitations in Code of Civil Procedure section 340(3) (*Goodman v. Lukens Steel Co., supra,* 482 U.S. 656, 661-662; superceded by statute, as explained in *Jones v. R. R. Donnelley & Sons* (2004) ___ U.S. ___ [124 S.Ct. 1836]; *Roman v. County of Los Angeles, supra,* 85 Cal.App.4th 316, 322); 2) the retaliation claim under FEHA was not filed within one year from the issuance of the May 24, 1999, right-to-sue notice; and 3) equitable tolling does not apply because plaintiff cannot satisfy the requirements of Government Code section 12965, subdivision (e).

Upon review of the documents before us in the case at bench, we hold that the retaliation claim was not filed within the one-year statute and that no legal reason has been given for any extension of that time period. Thus, to the extent the TAC alleges retaliation, the demurrer was properly sustained.[11]

Plaintiff's seventh cause of action (violation of civil rights under 42 U.S.C. § 1981) alleges defendants intended to discriminate against her because of her "sex, race and handicap condition" and deprived her of liberty and property without due process; refused to provide reasonable accommodations; and forced her into constructive discharge, all in violation of 42 U.S.C. § 1981 as well as Government Code § 12940. Again, plaintiff filed outside the one-year statute of limitations or even the two-year statute of limitations in which section 340, subdivision (3), was replaced by section 335.1; and plaintiff has not demonstrated a legal reason for extending any applicable limitations period. As to both § 1981 and § 1983, plaintiff has failed to argue and demonstrate that the four-year "catch-all" federal limitations applies to her causes of action. (See *Jones v. R. R. Donnelley & Sons, supra,* ___ U.S. ___ [124 S.Ct. 1836].)

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[11] In the previous appeal, as to the second cause of action for retaliation in violation of public policy in the SAC, we ruled that the original complaint for wrongful termination included an allegation of "retaliation" and we could not say as a matter of law that the demurrer should be sustained on the ground that the retaliation allegation was barred by the statute of limitations. Moreover, we held that the governmental tort claim adequately set forth the basis for a retaliation cause of action and the second cause of action was not barred by the two-year period set forth in Government Code section 945.6. The previous opinion held that the one-year statute of limitations set forth in Code of Civil Procedure section 340(3) applies to causes of action for wrongful termination in violation of public policy. (*Barton v. New United Motor Manufacturing* (1996) 43 Cal.App.4th 1200, 1209.)

We note that public policy wrongful termination claims are now governed by the 2-year statute in Code of Civil Procedure section 335.1. **(**Chin et al., Cal. Practice Guide, Employment Litigation (2003) § 16:447, p. 16-49**.)** Section 340(3) [one-year statute of limitations] became 335.1 (2-year statute of limitations for personal injury, added by Stats. 2002, c. 448 (S.B. 688, § 2.) The demurrer in the first appeal was sustained prior to this amendment. The demurrer in the instant appeal was sustained in March 2003.

e. The eighth cause of action for injunctive and declaratory relief.

The eighth cause of action in the TAC alleged that plaintiff has no "plain, adequate or complete remedy at law to redress the wrongs alleged" and would continue to suffer "unless the unlawful policies and practices set forth here are enjoined." Plaintiff therefore prayed for declaratory judgment that the practices were unlawful and that "equitable time limitations is tolled for excusable ignorance . . . and improper purpose on the part of defendants . . . ." Moreover, she prayed inter alia for a permanent injunction against defendant's continuing the allegedly unlawful and discriminatory practices. The trial court granted the demurrer, ruling that "[p]laintiff fails to allege a written instrument upon which declaratory relief may be based" and "fails to indicate why legal damages are not adequate." In addition, regarding the request for injunctive relief, the court ruled the cause of action "is unintelligible, ambiguous and uncertain."

Code of Civil Procedure section 1060 provides for declaratory relief for any "person interested under a written instrument, excluding a will or a trust, or under a contract, *or who desires a declaration of his or her rights or duties with respect to another*, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, . . . in cases of actual controversy relating to the legal rights and duties of the respective parties . . . ."

A written contract is not a necessary requirement for declaratory relief. (See, e.g., *Abbott v. City of Los Angeles* (1960) 53 Cal.2d 674, 678, footnote 2, criticized on other grounds in *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 62 [the use of injunction or declaratory relief is a proper method of determining the constitutionality of the challenged penal or nonpenal statute.]; *Columbia Pictures Corp. v. De Toth* (1945) 26 Cal.2d 753, 760 [disputed oral contract may properly be the subject of a declaratory judgment].)

As our Supreme Court observed in *Columbia Pictures*, *supra*, 26 Cal.2d 753, 761, "before declaratory relief may be denied on the ground of the existence of other remedies, 'it must clearly appear that the asserted alternative remedies are available to the

plaintiff and that they are speedy and adequate or as well suited to the plaintiff's needs as declaratory relief. [Citations.]'" In the case at bench, where any rights plaintiff may claim, and which would otherwise be available as legal remedies, are barred by the statute of limitations, tort claims, doctrine of exhaustion of administrative remedies, and other grounds, there is no reason the remedy of declaratory relief should be available. (See *Embarcadero Mun. Improvement Dist. v. County of Santa Barbara* (2001) 88 Cal.App.4th 781, 793, citing *North Star Reinsurance Corp. v. Superior Court* (1992) 10 Cal.App.4th 1815, 1822 [13 Cal.Rptr.2d 775] [statute of limitations governing request for declaratory relief is that applicable to an ordinary legal or equitable action based on the same claim].)

The same is true of plaintiff's prayer for injunctive relief. Although a party may at times obtain injunctive relief in a FEHA case (see *Aguilar v. Avis Rent A Car System, Inc*. (1999) 21 Cal.4th 121, 126 ["we hold that a remedial injunction prohibiting the continued use of racial epithets in the workplace does not violate the right to freedom of speech if there has been a judicial determination that the use of such epithets will contribute to the continuation of a hostile or abusive work environment and therefore will constitute employment discrimination"]; accord Chin et al., *supra*, Cal. Practice Guide, Employment Litigation § 9.23, p. 448), plaintiff's legal remedy was sufficient, if the complaint had been brought in a timely manner. "The rule in this state is that injunctive and declaratory relief will not be granted where there is a plain, complete, speedy, and adequate remedy at law. [Citation.]" (*Flying Dutchman Park, Inc. v. City and County of San Francisco* (2001) 93 Cal.App.4th 1129, 1138; accord 11 Witkin, Summary of Cal. Law (9th ed. 1990) Equity, § 3, p. 681.)

The demurrer was properly sustained as to all causes of action.

DISPOSITION

The judgment (order of dismissal) is affirmed. Each party shall bear its own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COOPER, P.J.

We concur:

RUBIN, J.

BOLAND, J.